

Amendment and Response Under 37 C.F.R. §1.116 - Expedited Examining Procedure  
Serial No.: 10/037,435  
Confirmation No.: 4823  
Filed: 31 December 2001  
For: HYDROGEN PEROXIDE AND PERACETIC ACID INDICATORS AND METHODS

---

Page 16 of 20

### Remarks

The Final Office Action mailed 22 December 2005 has been received and reviewed. Claims 1, 6, 12, 13, 38-40, and 42 having been amended, and claims 28-37 and 59-68 having been cancelled, the pending claims are claims 1-27 and 38-58. Support for the amendment to 1, 6, 12, 38-39, and 42 can be found in the specification as filed (e.g., page 3, lines 22-25). Reconsideration and withdrawal of the rejections are respectfully requested.

### Interview Summary

Applicants would like to thank the Examiner for the courtesy extended in the telephone interview on 9 March 2006 with Applicant's Representative, Ann M. Muetting, and Dan McIntyre, 3M Patent Liaison. During the telephone interview the Examiner indicated that the 102(e) rejection of claims 1-27 and 38-58 (over Kirkof et al., WO 98/58683 or Amhof et al.) on page 5 of the Office Action should be a 103 rejection. Applicant's Representative also discussed the new 102 rejection over Barrett (U.S. Patent No. 5,955,025); and urged the Examiner to reconsider the finality of this Office Action. The Barrett '025 patent had been considered by the Examiner when the previous Office Action was issued and could have been used in a rejection at that time. Finally, Applicant's Representative indicated that the unexpected results the Examiner alluded to in the discussion of the 103 rejections at pages 4 and 5 of the Office Action do exist and are presented in Applicant's Examples, as discussed below.

### Obviousness-Type Double Patenting Rejection

Claims 1-27 and 38-58 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,790,411. Claims 1-27 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of co-pending Application Serial No. 10/890,612. These rejections are rendered moot in view of the amendments presented herein.

**Amendment and Response Under 37 C.F.R. §1.116 - Expedited Examining Procedure**  
Serial No.: 10/037,435  
Confirmation No.: 4823  
Filed: 31 December 2001  
For: HYDROGEN PEROXIDE AND PERACETIC ACID INDICATORS AND METHODS

---

Page 17 of 20

Upon an indication of otherwise allowable subject matter and in the event these rejections are maintained, Applicants will provide an appropriate response.

### **The 35 U.S.C. §102 Rejection**

The Examiner rejected claims 1-27 and 38-58 under 35 U.S.C. §102(b) as being anticipated by Barrett (U.S. Patent No. 5,955,025). This rejection is rendered moot in view of the amendments presented herein.

There is no teaching or suggestion of Applicant's invention, in particular, the use of a transition metal salt that either includes an inorganic anion (e.g., claims 1 and 6); or is selected from the group consisting of cobalt chloride, cobalt acetate, cupric chloride, cupric sulfate, cupric acetate, chromium potassium sulfate, and combinations thereof (e.g., claim 13); or is selected from the group consisting of cupric chloride, ferrous chloride, cobalt chloride, cobalt acetate, cupric sulfate, ferrous sulfate, chromium potassium sulfate, cupric acetate, and combinations thereof (e.g., claim 40).

It is noted that this rejection was not presented in the first Office Action. In view of the fact that this document had been previously considered by the Examiner and could have been used to reject the originally filed claims, it is respectfully submitted that this action should not have been made final.

### **The 35 U.S.C. §103 Rejection**

The Examiner rejected claims 1-27 under 35 U.S.C. §103(a) as being unpatentable over Patel et al. (U.S. Patent No. 5,420,000). This rejection is respectfully traversed.

The Examiner rejected claims 1-27 and 38-58 under 35 U.S.C. §103(a) as being unpatentable over Kirkof et al. (U.S. Patent No. 6,488,890), WO 98/58683, or Amhof et al. (U.S. Patent No. 6,238,623). This rejection is respectfully traversed.

**Amendment and Response Under 37 C.F.R. §1.116 - Expedited Examining Procedure**  
Serial No.: 10/037,435  
Confirmation No.: 4823  
Filed: 31 December 2001  
For: HYDROGEN PEROXIDE AND PERACETIC ACID INDICATORS AND METHODS

---

Page 18 of 20

There is no teaching or suggestion in any of these documents, used in any combination, that a sterilization indicator that includes a combination of a salt of a transition metal and a distinct colorant that changes color when exposed to a sterilant could provide an advantageous color change when compared to the colorant alone. Such unexpected results can occur with Applicant's invention and are described in the Examples Section.

For example, the Examiner's attention is directed to Table 1a (page 36), Sample Numbers 1 and 2, which included a colorant but no metal salt, and displayed no color change upon contact with a sterilant. When cupric chloride was added, these same colorants produced a composition that did display a significant color change upon contact with a sterilant (see Table 1b, page 41, Samples 1 and 2). Similarly, when ferrous chloride was added, these same colorants produced a composition that also displayed a significant color change upon contact with a sterilant (see Table 2, page 46, Samples 1 and 2).

As another example, the Examiner's attention is directed to Table 3a, page 53, Samples 27 and 28, which either had a very slight color change or no color change when contacted with a sterilant without the presence of a metallic salt. However, compositions with these same colorants displayed a significant color change when cobalt chloride was present (see Table 3b, page 54, Samples 5 and 6).

As another example, the Examiner's attention is directed to Table 3a, page 51, Sample 6 (Patent Blue violet), which had no color change when contacted with a sterilant without the presence of a metallic salt. However, this colorant displayed a significant color change in the presence of various inorganic metallic salts, such as cobalt chloride, cupric chloride, and ferrous chloride; (see (Table 3b, Sample 1, page 54), (Table 6, Sample 1, page 57) and (Table 8, Sample 1, page 59), respectively.

As another example, the Examiner's attention is directed to Table 1a, page 38, Sample 33 (Reactive black 5), which had no color change when contacted with a sterilant without the presence of a metallic salt. However, this colorant displayed a significant color change in the

**Amendment and Response Under 37 C.F.R. §1.116 - Expedited Examining Procedure**

Page 19 of 20

Serial No.: 10/037,435

Confirmation No.: 4823

Filed: 31 December 2001

For: HYDROGEN PEROXIDE AND PERACETIC ACID INDICATORS AND METHODS

presence of inorganic metallic salts, such as, cupric chloride and ferrous chloride;; see (Table 1b, Sample 33, page 44) and (Table 2, Sample 33, page 49), respectively.

As another example, the Examiner's attention is directed to Table 3a, page 51, Sample 13 (D & C green No. 5), which had no color change when contacted with a sterilant without the presence of a metallic salt. However, this colorant displayed a significant color change in the presence of various inorganic metallic salts, such as cobalt acetate, cupric chloride, and ferrous chloride; see (Table 4, Sample 3, page 55), (Table 5, Sample 4, page 56) and (Table 7, Sample 4, page 58), respectively.

Thus, Applicant requests withdrawal of these rejections.

**Amendment and Response Under 37 C.F.R. §1.116 - Expedited Examining Procedure**

Page 20 of 20

Serial No.: 10/037,435

Confirmation No.: 4823

Filed: 31 December 2001

For: HYDROGEN PEROXIDE AND PERACETIC ACID INDICATORS AND METHODS

**Summary**

It is respectfully submitted that the pending claims 1-27 and 38-58 are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicant's Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted

By

Mueting, Raasch &amp; Gebhardt, P.A.

P.O. Box 581415

Minneapolis, MN 55458-1415

Phone: (612) 305-1220

Facsimile: (612) 305-1228

March 10, 2006  
DateBy: Ann M. Mueting

Ann M. Mueting

Reg. No. 33,977

Direct Dial (612) 305-1217

**CERTIFICATE UNDER 37 CFR §1.8:**

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 10 day of March, 2006, at 1:10pm (Central Time).

By: Sandy TruhartName: Sandy Truhart